



DEPARTMENT OF PLANNING AND BUILDING

JAMES A. BERGMAN
DIRECTOR

DATE: MAY 16, 2014 (*Distributed May 15, 2014*)

TO: HEARING OFFICER

FROM: MICHAEL CONGER, PLANNER III

SUBJECT: NON-HEARING ITEM #4 – REQUEST BY PEOPLES' SELF HELP HOUSING CORPORATION FOR A MINOR USE PERMIT TO ALLOW THE CONSTRUCTION OF 24 SINGLE FAMILY RESIDENCES. DRC2013-00065

RECOMMENDATION

That the Hearing Officer continue the above item to a date certain, **July 18, 2014**, to provide additional time to evaluate information obtained prior to a final decision. (Sec. 22.62.050B.5.c).

DISCUSSION

Staff was recently contacted by the US Fish and Wildlife Service (USFWS) in regard to the above Minor Use Permit. USFWS does not concur with the determination that impacts to the San Joaquin kit fox will be mitigated to a less-than-significant level. The conclusion that *take* of the kit fox will not occur is largely based upon a habitat evaluation conducted in 2005. USFWS requests that a new habitat evaluation be conducted in order to confirm the validity of that conclusion.

Because this project involves federal financing, it is also receiving environmental review pursuant to the National Environmental Policy Act (NEPA). A habitat evaluation will need to be conducted in order to receive concurrence from USFWS. The applicants are aware of this requirement.

In an email (attached), Julie Vanderwier of USFWS has requested that action on this Minor Use Permit be continued to allow time for (1) completion of the habitat evaluation, and (2) consultation with USFWS regarding kit fox mitigation. Staff anticipates that the above will confirm the validity of the 2009 Mitigated Negative Declaration. Assuming so, these tasks could be completed in the next 60 days, allowing this item to be acted upon on July 18, 2014. An additional continuance may be requested if more time is needed to complete this process.

ATTACHMENTS

1. Letter from USFWS to Tony Navarro
2. Email from J. Vanderwier to M. Conger



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
08EVEN00-2014-I-0266

April 15, 2014

Tony Navarro, Planner III
Department of Planning and Building
County of San Luis Obispo
976 Osos Street, Room 300
San Luis Obispo, California 93408

Subject: Request for Concurrence for the Peoples' Self Help Housing Corporation, Vesting Tentative Tract Map 2710, Community of San Miguel, County of San Luis Obispo, California

Dear Mr. Navarro:

We have reviewed your letter dated March 4, 2014, received by our office on March 6, 2014, requesting informal consultation pursuant to section 7 of the Endangered Species Act of 1973, as amended, regarding potential effects to the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) associated with a residential development project. It is your determination that project implementation may affect, but is not likely to adversely affect, the San Joaquin kit fox (hereafter, kit fox) and you have requested our concurrence with this determination.

The project proponent, The Peoples' Self Help Housing Corporation, is seeking funding from the Department of Housing and Urban Development (HUD) to develop 24 single-family units of affordable housing on a 5.39-acre parcel at 525 11th Street, San Miguel known as Vesting Tentative Tract Map (VTTM) 2710. In accordance with the regulatory requirements found at 24 CFR 58.4, HUD requires local governments to assume the responsibility for environmental review, decision-making, and actions that would otherwise apply to them. As such, the County of San Luis Obispo (County) is authorized to act as HUD's agent.

As part of your request, a project summary and the following documents were submitted for our review:

- Peoples' Self Help Housing – Tract 2710 (Weyrick) Project Site Photographs,
- Biological Report (Althouse and Meade 2005),
- March 17, 2010, letter from Jeffrey R. Single, Regional Manager, California Department of Fish and Game (now California Department of Fish and Wildlife), and
- April 22, 2010, Notice of Final County Action, PC Resolution No. 2010-008 with Findings.


The County completed a Negative Declaration (ND) pursuant to the California Environmental Quality Act (CEQA) in December 2009. The ND identified that the project would result in the permanent loss of 5.28 acres of habitat for San Joaquin kit fox. The Service functions as a responsible agency under CEQA; however, it does not appear that an early evaluation for kit fox was prepared for our review or that we had an opportunity to provide input. The biological report provided by Althouse and Meade, which is now almost 9 years old, does not speak to the potential for project effects to kit fox but rather assumes mitigation is needed based on the project's location within a 4:1 mitigation ratio area identified on the County's San Joaquin kit fox mitigation area map. A number of minimization measures for kit fox associated with our 1999 protocol were included in Planning Commission resolution No. 2010-008 along with three options to mitigate for impacts to kit fox based upon a review by the California Department of Fish and Game (now California Department of Fish and Wildlife; Department). The mitigation options include: (1) providing for the permanent protection of 21.12 acres of suitable habitat for kit fox in an identified corridor area, (2) deposit of \$52,800 of funds into an in-lieu fee program administered by The Nature Conservancy and intended to benefit kit fox, or (3) purchase of 21.12 acres of kit fox credits in an approved conservation bank. Whichever mitigation option is selected, it must be in place prior to the approval of an improvement plan for the VTTM.

At this time, we are not able to concur with your determination that implementation of the proposed project is not likely to adversely affect kit fox. While there is not a clear relationship between significant effects identified pursuant to CEQA and our assessment of adverse effects to a species pursuant to section 7 of the Act, the threshold for significance under CEQA is considered to include the potential for adverse effects. As the ND identified impacts to kit fox that required mitigation, it is difficult for us to consider that the project also does not have the potential to adversely affect kit fox; the materials provided with your request do not speak specifically to this issue. Acceptance of the standard mitigation ratio for the area, as established by the County and the Department, does not ensure there will be no adverse effects to kit fox. Information that would be provided through the completion of our early evaluation (see attached) would help us to better understand the nature of project effects.

This concludes our informal consultation on the subject project pursuant to section 7(a)(2) of the Act. Although not specifically a part of our section 7 consultation responsibilities, the project's potential to affect migratory birds should be considered to ensure compliance with the Migratory Bird Treaty Act.

If you have any questions regarding our determination, please contact Julie M. Vanderwier at (805) 644-1766, extension 222.

Sincerely,



Douglass M. Cooper
Deputy Assistant Field Supervisor

Attachment



Re: DRC2013-00065; peoples' self help housing VTTM 2710

Vanderwier, Julie to: mconger

Cc: Roger Root, Douglass Cooper

05/14/2014 04:27 PM

michael. thank you so much for your responsiveness; i really appreciate it.

whether this project can go forward is contingent on receipt of HUD funding, which in turn is contingent on the completion of NEPA for the project. i presume the NEPA compliance is an environmental assessment, which would mean that the project could have no potential to significantly affect the quality of the human environment. it seems prudent to make sure that this is the care for biological resources (i.e., san joaquin kit fox) before the county approves a minor use permit for the proposed project. recognizing that there is a "timed exam" quality to all of this, it is still the service's preference that the hearing be postponed until NEPA compliance is complete. -- julie

julie m. vanderwier, senior fish & wildlife biologist
u.s. fish & wildlife service
ventura fish & wildlife office
2493 portola road, suite b
ventura, california 93003
805.644.1766 ext. 222

On Wed, May 14, 2014 at 3:22 PM, <mconger@co.slo.ca.us> wrote:

Hi, Julie...

Here's what I've found out....

Tony has requested an updated habitat assessment as part of the NEPA review to allow Peoples Self Help to use federal funds. It has not yet been provided, but I understand it's coming in soon, as the funding is time-sensitive. We anticipate that the habitat evaluation will document that conditions have not changed much on the site and that the existing mitigation measures applied to the tract are still appropriate. I expect Tony will be coordinating with you again once that information comes in.

As for the Minor Use Permit that's in process.... the item is scheduled for Friday's Planned Department Hearing as a "non-hearing" item. Because it's a non-hearing item, the hearing officer does not have the discretion to amend the conditions or change the project in any way. He can, however, choose to continue the item to a later hearing date if it's warranted.

This is a pretty unique situation in that there is a NEPA requirement that must be met to fund the project. To complete the NEPA document, there will need to be an updated habitat assessment. So, this means there is still an opportunity to confirm and/or add to mitigation associated with the project even if the Minor Use Permit has already been acted on. No construction would take place until the funding is

approved, which would ensure that this gets completed.

So, we have two choices: (1) Allow the MUP to go through as-is and address the updated habitat assessment through the NEPA process; or (2) Request that the MUP be continued off-calendar to allow time for the habitat assessment to be submitted.

I'm sure the applicant would prefer number 1. If you're amenable to that, I think that's the way we should go. But, if USFWS would like the hearing to be continued until the habitat assessment is resolved, I'm pretty sure we can accommodate that. If you could, let me know your preference.

Thanks much,

Michael T. Conger
Long Range Planning Division
County of San Luis Obispo Dept. of Planning and Building
Phone: (805) 781-5136
Fax: (805) 781-5624
Email: mconger@co.slo.ca.us

From: "Vanderwier, Julie" <julie_vanderwier@fws.gov>
To: <mconger@co.slo.ca.us>
Date: 05/14/2014 01:58 PM
Subject: DRC2013-00065; peoples' self help housing VTTM 2710

michael. i believe that there are unresolved endangered species issues associated with this project. attached is the letter we sent to tony navarro on april 15, 2014, as part of his request for our concurrence, pursuant to section 7(a)(2) of the federal endangered species act, that the proposed project was not likely to result in adverse effects to san joaquin kit fox. i am concerned that our inability to concur with this request was not considered. as such, we request our letter (attached) be made available to the planning department hearing officer and entered into the record at the hearing for this project scheduled for may 16, 2014.

the november 2013 initial study doesn't mention san joaquin kit fox and no mitigation is included in exhibit B contained therein. it was our understanding from discussions with mr. navarro that mitigation for this species (to address CDFW concerns only) was to be provided in the form of payment of an in-lieu fee. as a responsible agency, the service should have been contacted at the time the initial study was being prepared so that we could provide input relative to endangered species issues and assist you in determining whether a federal

permit might be required.

i would appreciate a response to this email. if you have any questions, feel free to give me a call. thanks. -- julie

julie m. vanderwier, senior fish & wildlife biologist
u.s. fish & wildlife service
ventura fish & wildlife office
2493 portola road, suite b
ventura, california 93003
805.644.1766 ext. 222

[attachment "Peoples' Self Help Housing, VTTM 2710, USFWS response 04-15-2014.pdf" deleted by Michael Conger/Planning/COSLO]

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